

## SENATE BILL No. 330

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-18-2-171.2; IC 16-41-6; IC 16-18-2-290.5; IC 16-41-6-2.5.

**Synopsis:** HIV testing of pregnant women. Requires that a pregnant woman be tested for HIV during pregnancy or at the time of delivery unless she refuses. Requires that a pregnant woman's refusal to consent to the test be documented in the woman's medical records. Requires a pregnant woman who refuses to consent to the test to acknowledge that she: (1) received the required counseling and information; and (2) refuses to consent to the test. Specifies certain information regarding HIV testing, transmission, prevention, and treatment that must be provided to a pregnant woman. Requires that information regarding the HIV testing status of a pregnant woman be included on the confidential part of the birth or stillbirth certificate. Requires the results of the tests to be confidential. Requires the state department of health to distribute written materials explaining treatment options for individuals who have a positive HIV test. Repeals a provision concerning voluntary HIV testing for pregnant women and a provision containing an obsolete definition.

**Effective:** Upon passage; July 1, 2003.

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**Miller**

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January 15, 2003, read first time and referred to Committee on Health and Provider Services.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## SENATE BILL No. 330

A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 16-18-2-171.2 IS ADDED TO THE INDIANA  
2       CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3       [EFFECTIVE JULY 1, 2003]: **Sec. 171.2. "HIV test", for purposes**  
4       **of IC 16-41-6, has the meaning set forth in IC 16-41-6-0.5.**

5       SECTION 2. IC 16-41-6-0.5 IS ADDED TO THE INDIANA CODE  
6       AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
7       1, 2003]: **Sec. 0.5. As used in this chapter, "HIV test" refers to a**  
8       **test recognized by the state department as a standard serological**  
9       **test for the antibody or antigen to HIV by an approved lab.**

10       SECTION 3. IC 16-41-6-1 IS AMENDED TO READ AS  
11       FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) Except as  
12       provided in subsection (b), a person may not perform a ~~screening or~~  
13       ~~confirmatory test for the antibody or antigen to the human~~  
14       ~~immunodeficiency virus~~ **an HIV test** without the consent of the  
15       individual to be tested or a representative as authorized under  
16       IC 16-36-1. A physician ordering the test or the physician's authorized  
17       representative shall document whether or not the individual has



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consented. **The HIV test may not be performed on a woman described in section 5, 6, or 7 of this chapter if the woman refuses under section 8 of this chapter to consent to the HIV test.**

(b) The **HIV test for the antibody or antigen to HIV** may be performed if one (1) of the following conditions exists:

(1) If ordered by a physician who has obtained a health care consent under IC 16-36-1 or an implied consent under emergency circumstances and the **HIV** test is medically necessary to diagnose or treat the patient's condition.

(2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual. A hearing held under this subsection shall be held in camera at the request of the individual.

(3) If the **HIV** test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The **HIV** test is ordered under section 4 of this chapter.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

SECTION 4. IC 16-41-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Subject to subsection ~~(e)~~, **(f)**, if:

(1) the mother of a newborn infant has not had ~~a~~ **an HIV** test performed under ~~IC 16-41-6-2.5~~ **section 5, 6, or 7 of this chapter;**

(2) the mother of a newborn infant has refused ~~a~~ **an HIV** test for the newborn infant to detect ~~the human immunodeficiency virus~~ HIV or the antibody or antigen to HIV; and

(3) a physician believes that **HIV** testing of the newborn infant is medically necessary;

the physician **overseeing the care of the newborn infant** may order a confidential **HIV** test for the newborn infant. ~~in order to detect the human immunodeficiency virus HIV or the antibody or antigen to HIV.~~ The **HIV** test must be ordered at the earliest feasible time not exceeding forty-eight (48) hours after the birth of the infant.

(b) If the physician orders ~~a~~ **an HIV** test under subsection (a), the physician must:

(1) notify the mother of the newborn infant of the **HIV** test; and

(2) provide ~~human immunodeficiency virus~~ HIV information and counseling to the mother. The information and counseling must include the following:

(A) The purpose of the **HIV** test.



(B) The risks and benefits of the **HIV** test.

(C) A description of the methods of HIV transmission.

(D) A discussion of risk reduction behavior modifications, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk.

(E) Referral information to other HIV prevention, health care, and psychosocial services.

(c) The confidentiality provisions of IC 16-41-2-3 apply to this section.

(d) The results of the confidential **HIV** test ordered under subsection (a) must be released to the mother of the newborn infant.

**(e) If an HIV test ordered under subsection (a) is positive, the physician who ordered the HIV test shall inform the mother of the newborn infant of:**

**(1) all treatment options available to the newborn infant; and**

**(2) the prognostic implications of the disease.**

**(f) If the a parent of the a newborn infant objects in writing to HIV testing of the newborn infant** for reasons pertaining to religious beliefs, the newborn infant is exempt from the **HIV** test under subsection (a).

**(g)** The state department shall adopt rules under IC 4-22-2 to carry out this section.

**(h) The results of an HIV test performed under this section are confidential.**

SECTION 5. IC 16-41-6-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 5. (a) This section applies to the following providers who provide prenatal care within the scope of the provider's license:**

**(1) A physician licensed under IC 25-22.5.**

**(2) An advanced practice nurse licensed under IC 25-23.**

**(b) Subject to section 9 of this chapter, a provider described in subsection (a) who:**

**(1) diagnoses the pregnancy of a woman; or**

**(2) is primarily responsible for providing prenatal care to a pregnant woman;**

**shall order to be taken a specimen of the pregnant woman's blood and shall submit the specimen to an approved laboratory for an HIV test.**

SECTION 6. IC 16-41-6-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 6. Subject to sections 8 and 9 of this chapter, an**

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individual other than a physician who is permitted by law to attend a pregnant woman but who is not permitted by law to take blood specimens shall request that a licensed physician order an HIV test for the pregnant woman.

SECTION 7. IC 16-41-6-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 7. Subject to section 9 of this chapter, if, at the time of delivery, there is no written evidence that an HIV test has been performed under section 5 or 6 of this chapter, the individual in attendance at the delivery shall order an HIV test of the woman's blood at the time of the delivery.**

SECTION 8. IC 16-41-6-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 8. A pregnant woman has a right to refuse an HIV test under section 5, 6, or 7 of this chapter.**

SECTION 9. IC 16-41-6-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 9. (a) This section applies to:**

- (1) a physician or an advanced practice nurse who orders an HIV test under section 5 of this chapter or to the physician's or nurse's designee;
- (2) an individual other than a physician permitted by law to attend a pregnant woman who requests that a licensed physician order an HIV test for the pregnant woman under section 6 of this chapter; and
- (3) an individual who, in attendance at the delivery of a child, orders an HIV test under section 7 of this chapter.

**(b) An individual described in subsection (a) shall inform the pregnant woman that:**

- (1) the individual is required by law to:
  - (A) if the individual is an individual described in subsection (a)(1) or (a)(3), order an HIV test; or
  - (B) if the individual is an individual described in subsection (a)(2), request that a licensed physician order an HIV test; unless the pregnant woman refuses; and
- (2) the pregnant woman has a right to refuse the HIV test.

**(c) An individual described in subsection (a) shall:**

- (1) provide the pregnant woman with a description of the methods of HIV transmission;
- (2) discuss risk reduction behavior modifications with the pregnant woman, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through



breast milk;

(3) provide the pregnant woman with referral information to other HIV prevention, health care, and psychosocial services; and

(4) explain to the pregnant woman:

(A) the purpose of the HIV test; and

(B) the risks and benefits of the HIV test.

(d) An individual described in subsection (a) shall document in the pregnant woman's medical records that the pregnant woman received the information required under subsections (b) and (c).

(e) If a pregnant woman refuses to consent to an HIV test, the refusal must be noted in the pregnant woman's medical records.

(f) If an HIV test ordered under section 5, 6, or 7 of this chapter is positive:

(1) an individual described in subsection (a) shall inform the pregnant woman of all treatment options available to the pregnant woman; and

(2) an individual described in subsection (a)(1) shall inform the pregnant woman of the prognostic implications of the disease.

(g) IC 16-41-2-3 applies to a positive HIV test under section 5, 6, or 7 of this chapter.

(h) The results of an HIV test performed under section 5, 6, or 7 are confidential.

(i) As a routine component of prenatal care, an individual described in subsection (a) shall provide information and counseling regarding HIV and an HIV test and offer and recommend an HIV test.

(j) An individual described in subsection (a) shall obtain a statement, signed by the pregnant woman, acknowledging that she was counseled and was provided the required information set forth in subsection (c) to ensure that an informed decision has been made.

(k) A pregnant woman who refuses an HIV test under this section must do so in writing.

SECTION 10. IC 16-41-6-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. The state department shall require, on the confidential part of each birth certificate and stillbirth certificate retained by the state department, in addition to the information otherwise required to be included on the certificate, the following information:



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1       **(1) Whether an HIV test was performed on the woman who**  
2       **bore the child.**

3       **(2) If an HIV test was performed:**

4           **(A) the date the blood specimen was taken; and**

5           **(B) whether the HIV test was performed during pregnancy**  
6           **or at the time of delivery.**

7       **(3) If an HIV test was not performed, the reason why the HIV**  
8       **test was not performed.**

9       SECTION 11. IC 16-41-6-11 IS ADDED TO THE INDIANA  
10      CODE AS A NEW SECTION TO READ AS FOLLOWS  
11      [EFFECTIVE UPON PASSAGE]: **Sec. 11. The state department**  
12      **shall distribute to physicians and to other individuals who are**  
13      **allowed by law to attend a pregnant woman information available**  
14      **from the federal Centers for Disease Control and Prevention that**  
15      **explains the treatment options available to an individual who has**  
16      **a positive HIV test.**

17      SECTION 12. THE FOLLOWING ARE REPEALED [EFFECTIVE  
18      JULY 1, 2003]: IC 16-18-2-290.5; IC 16-41-6-2.5.

19      SECTION 13. **An emergency is declared for this act.**

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